

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Expanding the Economic and Innovation ) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive )
Auctions )
Post-Incentive Auction Transition ) MB Docket No. 16-306
Request for Waiver of Cox Television Jacksonville ) LMS File No. 0000115905
LLC, Licensee of Station WFOX-TV, Jacksonville, ) Facility ID No. 11909
Florida )

ORDER

Adopted: June 17, 2020

Released: June 18, 2020

By the Commission:

I. INTRODUCTION

1. This Order grants a waiver to Cox Television Jacksonville LLC (Licensee) for station WFOX-TV, Jacksonville, Florida (Station). Specifically, we waive section 73.3700(b)(4)(iii) of the Commission’s rules which prohibits stations from operating on their pre-auction channel assignments after July 13, 2020, and section 73.616(d) of the Commission’s rules which prohibits stations from causing more than 0.5 percent interference of a station’s population served. Due to construction delays that were beyond the Licensee’s control, we hereby extend the deadline for the Station to vacate its pre-auction channel assignment to September 8, 2020 and allow the Station to cause temporary increased pairwise interference of up to two percent during the extended period.

II. BACKGROUND

2. In connection with the broadcast television incentive auction, 987 full-power and Class A TV broadcast stations were reassigned to new TV channels in order to clear spectrum for flexible wireless licenses in the 600 MHz band awarded by auction. Before the auction commenced in March 2016, the Commission established that all reassigned TV stations must stop transmitting on their pre-auction channels, thereby clearing the spectrum for the wireless auction winners, no later than 39 months after the conclusion of the auction (herein “39-month transition period” or “post-auction transition period”), which

1 Cox Television Jacksonville LLC (Licensee), Request for Waiver for station WFOX-TV, Jacksonville, Florida, LMS File No. 0000115905 (June 9, 2020) (Cox Request for Waiver).

2 47 CFR §§ 73.616(d), 73.3700(b)(4)(iii).

3 Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268 et al., Report and Order, 29 FCC Rcd 6567, 6575, para. 19 (2014) (Incentive Auction R&O), aff’d, Nat’l Assoc. of Broadcasters et al. v. FCC, 789 F.3d 165 (D.C. Cir. 2015) (NAB v. FCC) (subsequent citation omitted).

4 See Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (Closing and Channel Reassignment Public Notice).

is July 13, 2020.<sup>5</sup> The Commission determined that 39 months would be sufficient for all reassigned TV stations to complete construction of their post-auction channels, thus allowing them to vacate their pre-auction channels.<sup>6</sup> The Commission also noted that a lengthier post-auction transition period could depress forward-auction participation or the value of investments made by wireless auction winners and could delay the launch of innovative mobile broadband services.<sup>7</sup>

3. *Transition Scheduling Plan.* While July 13, 2020 is the ultimate end date for the post-auction transition period, each reassigned TV station received its own transition and construction schedule within that 39-month period. To ensure the efficient allocation of construction resources and that station channel moves were carefully coordinated to reflect inter-station interference dependencies,<sup>8</sup> the Commission delegated authority to the Media Bureau to establish individual construction deadlines for reassigned TV stations within the 39-month transition period.<sup>9</sup> In 2017, the Media Bureau adopted the Transition Scheduling Plan.<sup>10</sup> One objective of the plan was to assign TV stations whose pre-auction channels were in the 600 MHz Band to earlier phases to clear the 600 MHz Band sooner for the wireless auction winners.<sup>11</sup> In addition, to reduce dependencies between stations during the post-auction transition period, the Media Bureau decided that it would allow temporary increased pairwise (station-to-station) interference of up to two percent during the post-incentive auction transition period rather than the standard of 0.5 percent set forth in the rules.<sup>12</sup> The Transition Scheduling Plan placed each reassigned station into one of 10 transition phases that started at the close of the auction, April 13, 2017. Stations

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<sup>5</sup> 47 CFR 73.3700(b)(4)(iii); *Incentive Auction R&O*, 29 FCC Rcd at 6797-6802, paras. 563-573. The 39-month transition period, also defined in the Commission's rules as the post-auction transition period, 47 CFR § 27.4, commenced upon release of the April 2017 Public Notice announcing the end of the auction and consists of a three-month window for stations to file their initial construction permit application and a 36-month period for reassigned stations to transition to their post-auction channel. *Incentive Auction R&O*, 29 FCC Rcd at 6796, para. 559; 47 CFR § 73.3700(b)(1)(i).

<sup>6</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6799-801, paras. 568-71. The Commission also noted that this period would closely coincide with the three-year period established in the Spectrum Act to reimburse broadcasters for their repacking expenses and thus ensure that stations are successfully reimbursed for their expenses. *Id.* at 6799, para. 568. The 2018 Reimbursement Expansion Act (REA) appropriated additional reimbursement funds and made them available until July 3, 2023. See *Consolidated Appropriations Act*, 2018, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)).

<sup>7</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6801, para. 572. Broadcasters challenged the 39-month length of the post-auction transition period alleging it was insufficient, but the D.C. Circuit upheld the Commission's decision. *NAB v FCC*, 789 F.3d at 182.

<sup>8</sup> For example, Station A is reassigned from channel 25 to channel 18. Station B is reassigned from channel 45 to channel 25. Station A must vacate channel 25 before Station B can move to channel 25 so that neither station will experience undue interference.

<sup>9</sup> 47 CFR § 73.3700(b)(1)(vi); *Incentive Auction R&O*, 29 FCC Rcd at 6797, 6798, paras. 563, 565.

<sup>10</sup> *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890 (IATF/MB 2017) (*Transition Scheduling Adoption Public Notice*).

<sup>11</sup> *Id.* at 901, para. 26. See 47 CFR § 73.616(d); *Incentive Auction R&O*, 29 FCC Rcd at 6575-76, para. 19 (limiting pairwise interference increases to no more than 0.5 percent of a station's population served on its post-auction channel with no cap on the aggregate interference a station may receive); *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16.

<sup>12</sup> 47 CFR § 73.616(d); *Incentive Auction R&O*, 29 FCC Rcd at 6575-76, para. 19 (limiting pairwise interference increases to no more than 0.5 percent of a station's population served on its post-auction channel with no cap on the aggregate interference a station may receive); *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16.

were assigned to phases based on specific constraints and objectives.<sup>13</sup> Each phase was then assigned a specific phase testing start date and phase completion date.<sup>14</sup> Phases one through nine are now complete. The testing period start date for phase 10, the final phase of the transition, began on May 2, 2020, and the phase 10 completion date is 11:59 P.M. on July 3, 2020.

4. The Commission provided that as soon as a station begins operating on its post-auction channel, it must terminate operations on its pre-auction channel.<sup>15</sup> Each station's phase completion date is both (1) the date on which a station must vacate its pre-auction channel; and (2) the date by which the station must have completed construction of the post-auction channel. The Commission explained that a station may request and receive an extension of the date to complete construction of the station on its post-auction channel.<sup>16</sup> An applicant must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control.<sup>17</sup> Such an extension does not by itself permit a station to continue operating on its pre-auction channel.<sup>18</sup> But where the Bureau has permitted a station to modify the date on which it must vacate its pre-auction channel,<sup>19</sup> it has adjusted the date by which it must have completed construction of the post-auction channel accordingly.<sup>20</sup>

5. *Phase Change Waivers.* Throughout the transition, the Media Bureau has moved certain stations to different phases on a case-by-case basis, in some cases permitting them to remain on their pre-auction channel longer than the originally assigned phase transition date permitted based on their initial phase assignment.<sup>21</sup> A waiver of such an assigned phase was deemed appropriate where the particular facts would make strict compliance inconsistent with the public interest, and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy

<sup>13</sup> See *id.* at 896-902 paras. 14-28 and 932-35, paras. 20-22.

<sup>14</sup> Each transition phase has a testing period during which a station in that phase may begin testing equipment on its new channel and a phase completion date on which a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64.

<sup>15</sup> See 47 CFR 73.3700(b)(4)(iii); *Incentive Auction R&O*, 29 FCC Rcd at 6806, para. 584; *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8243, para. 10 (IATF & MB 2018) (*Transition Reminder Public Notice*).

<sup>16</sup> The *Incentive Auction R&O* provides examples of six circumstances that might justify an 180-day extension of a station's post-auction construction permit: (1) weather-related delays; (2) construction delays due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services; and (6) financial hardship with sufficient supporting evidence. See *Incentive Auction R&O*, 29 FCC Rcd at 6804-05, paras. 581-82; 47 CFR § 73.3700(b)(5)(ii) and (iii). Stations needing additional time to construct after an initial 180-day extension are subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv) citing 73 CFR § 73.3598(b). See also, *Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Nexstar Broadcasting, Inc., licensee of stations WOTV(TV), Battle Creek MI, and WANE-TV, Fort Wayne, IN* (Apr. 14, 2020) available at LMS File No. 000011060.

<sup>17</sup> Throughout the transition, the Media Bureau has extended or tolled construction permit deadlines over 300 times.

<sup>18</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6806, para. 584; 47 CFR § 73.3700(b)(5).

<sup>19</sup> See *infra* para. 5 (discussing phase change waivers).

<sup>20</sup> Similarly, in light of the waivers granted herein, we direct the Bureau to modify the Station's construction permit expiration date to correspond to the Station's new post-auction transition period deadline. See *infra* para. 19.

<sup>21</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 47-52.

on an individual basis.<sup>22</sup> The Media Bureau noted that it would evaluate such requests to assess the impact on the transition schedule, including the impact on both other broadcasters and viewers, in order to facilitate a timely and orderly transition.<sup>23</sup> The Media Bureau stated that it would view favorably requests that were compliant with the Commission's rules and have little or no impact on the transition schedule.<sup>24</sup> Requests that the staff determined would be likely to delay or disrupt the transition schedule would be viewed unfavorably.<sup>25</sup> Throughout the transition, the Media Bureau has utilized this flexibility to grant such phase assignment waivers more than 200 times.

6. *COVID-19 Phase Changes.* On March 17, 2020, the Media Bureau issued guidance to all repacked stations assigned to phase 9, which had a phase testing period that began on March 14, 2020, and a phase completion date of May 1, 2020. In light of the fact that the Centers for Disease Control and Prevention was closely monitoring an outbreak of respiratory illness COVID-19 caused by a novel coronavirus, the World Health Organization had classified it as a pandemic, and the President had declared it a national emergency, the guidance stated that any station scheduled to complete its transition in phase 9 that believed it might be unable to meet phase 9 deadline would be granted a waiver and reassignment to phase 10, which began on May 2, 2020, and ends on July 3, 2020.<sup>26</sup> Following the release of this guidance, the Media Bureau moved 48 stations from phase 9 to 10 at the request of the stations. Forty other phase 9 stations completed the transition by the end of phase 9.

7. *Transition Status.* As of June 10, 2020, 893 of the 987 reassigned stations are no longer operating on their pre-auction channel, including 11 phase 10 stations that have already transitioned. Ninety-four stations continue to operate on their pre-auction channel, including 22 in the 600 MHz band. All of those stations are subject to the phase completion date of 11:59 P.M. on July 3, 2020. Furthermore, as noted above, pursuant to section 73.3700(b)(4)(iii) of the rules, repacked stations are not permitted to operate on their pre-auction channel after the end of the post-auction transition period, which is scheduled to conclude on July 13, 2020.

8. *WFOX-TV Waiver Request.* WFOX-TV is currently licensed to operate on channel 32. It was reassigned to channel 14 in the *Closing and Channel Reassignment Public Notice* and was originally assigned to transition phase 7, which had a phase completion date of January 17, 2020. In January 2020, the Station was granted a modification and re-assigned to phase 10.<sup>27</sup> WFOX-TV is part of Linked-Station Set 55 and is directly linked with station WHLV-TV, Cocoa, Florida (WHLV-TV).<sup>28</sup> WHLV-TV transitioned to its post-auction channel assignment in phase 9, which had a deadline of May 1, 2020. WFOX-TV is upstream of WHLV-TV, meaning that if WFOX-TV did not move to its new channel before or at the same time as WHLV-TV moved to its new channel, the stations would cause interference to each other. To prevent increased temporary pairwise interference greater than two percent after

<sup>22</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. See *id.* See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

<sup>23</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 881-82, para. 73 (MB 2017) (*Transition Procedures Public Notice*).

<sup>24</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

<sup>25</sup> *Id.*; see *Transition Reminder Public Notice*, 33 FCC Rcd at 8244-45, para. 14.

<sup>26</sup> *Guidance for Stations in Phase 9 of the Post-Incentive Auction Transition as a Result of the Novel Coronavirus (COVID-19) Pandemic*, Public Notice, 35 FCC Rcd 2720 (IATF & MB 2020).

<sup>27</sup> LMS File No. 0000095289 (WFOX-TV Phase Change Request).

<sup>28</sup> WHLV-TV is licensed to Trinity Broadcasting of Texas, Inc.

WHLV-TV transitioned,<sup>29</sup> WFOX-TV, as a condition of its change from phase 7 to phase 10, reduced its power to 900 KW.<sup>30</sup> WFOX-TV has also accepted limited amounts of temporary increased pairwise interference above two percent from WHLV-TV, since that time.

9. On June 9, 2020, the Licensee filed a request for waiver of the July 3, 2020, phase 10 completion date and the July 13, 2020, transition period deadline to permit the Station to remain on its pre-auction channel until September 8, 2020. The Licensee states that the Station provides many hours of weekly local news coverage and popular network-affiliated programming that is particularly important to the community during the current Florida hurricane season, COVID-19 pandemic, and widespread economic distress.<sup>31</sup> The Declaration of the Station's Director of Engineering, Shane Emery, details the work performed over the three-year transition period to move to post-auction channel, Channel 14.<sup>32</sup> Assignment to Channel 14 requires the Station to protect land mobile operations from interference. Testing began on December 26, 2019 and showed impermissible interference. The Station then hired a remediation consultant and developed a remediation plan to fabricate, install, and test custom-made equipment to shield two health and safety entities subject to such interference protection requirements before turning up power and testing at other locations. Filters that were to be installed in March were delayed, in part due to COVID-19 work stoppages, and are now expected to be installed in late June/early July.<sup>33</sup> After confirming that those filters successfully protect the two health and safety operators, additional testing must be undertaken to consider whether the Channel 14 operations affect land mobile operations of 65 licenses operating from 13 sites.<sup>34</sup> Such tests could demonstrate the need for additional remediation using off the shelf or custom filters or the need to relocate land-mobile operators.<sup>35</sup> Accordingly, the Licensee states that the construction period could extend to September 8, 2020.<sup>36</sup>

10. The Licensee states that it has evaluated the alternatives included in the Transition Scheduling Plan for a station to vacate its pre-auction channel prior to completion of its post-auction facility, including moving to interim facilities on a station's post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing,<sup>37</sup> and that those options are not available to WFOX-TV.<sup>38</sup> The Licensee states that interim facilities on its reassigned channel 14 are not a solution because they would also need to protect land mobile operations. The Licensee could not identify an available vacant channel other than Channel 14. With regard to channel sharing, the Licensee asserts that it lacks sufficient time to identify a channel-sharing partner and negotiate an agreement. It also states that the Station "uses its channel bandwidth very intensively already" with network programming and subchannel network affiliations preventing suitable channel sharing arrangements.<sup>39</sup>

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<sup>29</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

<sup>30</sup> WFOX-TV Phase Change Request at 2.

<sup>31</sup> Cox Request for Waiver at 1.

<sup>32</sup> Declaration of Shane Emery, Cox Request for Waiver, ¶¶ 8-22 (Emery Decl.).

<sup>33</sup> Cox Request for Waiver at 3.

<sup>34</sup> Emery Decl. ¶ 20.

<sup>35</sup> Cox Request for Waiver at 3.

<sup>36</sup> *Id.*, Emery Decl. ¶ 23.

<sup>37</sup> Temporary channel sharing in this context is referred to by the Media Bureau as "temporary joint use of a channel." *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 917, paras. 58-59.

<sup>38</sup> Cox Request for Waiver at 7.

<sup>39</sup> *Id.* at 8, Declaration of James Kauffman, Cox Waiver Request.

11. The Licensee states that the Station's channel 32 operations are predicted to cause interference to slightly less than two percent of the service population for WHLV-TV, Cocoa, Florida, in the Orlando market, and will not interfere with or delay the transition of any other station. Further, the Licensee states that it "has discussed the matter with WHLV-TV's owner, Trinity Broadcasting of Texas, Inc. (Trinity), and Trinity does not believe it is experiencing actual interference from WFOX-TV. Trinity also has no objection to WFOX-TV remaining on Channel 32."<sup>40</sup> The Licensee states it will continue to accept any temporary pairwise interference from WHLV-TV and operate at reduced power in order to continue to keep any interference caused to WHLV-TV below two percent.<sup>41</sup> The Licensee pledges to mitigate any viewer disruption caused by the change to the transition schedule by "increasing viewer education and outreach above and beyond what is required by the Commission's rules through additional viewer PSAs, news stories, and digital and social media posts."<sup>42</sup>

### III. DISCUSSION

12. We grant the Licensee's waiver request for WFOX-TV. A waiver of our rules is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>43</sup> We find that an individual station's request for a waiver of sections 73.3700(b)(4)(iii) and 73.616(d) of our rules,<sup>44</sup> and modification of the station's phase completion date beyond July 13, 2020, and application of the post-auction transition period standard of two percent temporary pairwise interference may be justified where, notwithstanding the station's reasonable diligence during the post-auction transition period to vacate its pre-auction channel, specific circumstances beyond the station's control prevent it from vacating its pre-auction channel by July 13, 2020, other than by going dark. In the instant case, we believe the Licensee has satisfied the conditions for a waiver and that granting it will serve the public interest. Modifying the Station's deadline will ensure that the public interest is served by permitting the Station to continue to serve its viewers without interruption on its pre-auction channel for a limited amount of time.

13. We find that the Licensee has presented information demonstrating that during the course of the post-auction transition period it pursued and scheduled work sufficient to timely complete the Station's construction project.<sup>45</sup> However, during the last several months, the Station encountered construction delays that were beyond the Station's control related to remediation of established interference to two health and safety land mobile operators, delayed delivery of custom filters due in part to COVID-19 work stoppages, and the requirement to perform additional testing and possible remediation with regard to a significant number of additional land mobile operations.<sup>46</sup> The Licensee has established that there are no facilities available to the Station, or that could reasonably be made available to the Station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit it to vacate its pre-auction channel without going dark. The Licensee has also presented information demonstrating that moving to interim facilities on a the Station's post-auction channel, operating at

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<sup>40</sup> Cox Request for Waiver at 7, Emery Decl. ¶ 18.

<sup>41</sup> Cox Request for Waiver at 1, 4.

<sup>42</sup> *Id.* at 9.

<sup>43</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

<sup>44</sup> 47 CFR §§ 73.616(d), 73.3700(b)(4)(iii).

<sup>45</sup> See Cox Request for Waiver at 1-3, Emery Decl. ¶¶ 8-17.

<sup>46</sup> See Cox Request for Waiver at 3, Emery Decl. ¶¶ 18-22.

reduced power on a vacant channel, and temporary channel sharing are not feasible options for the Station.<sup>47</sup> We also view the request favorably because it will not delay or disrupt other transitioning stations.<sup>48</sup> WFOX-TV's continued operation on channel 32 will result in interference in excess of the 0.5 percent threshold permitted by our rules to station WHLV-TV, but that interference will not exceed the two percent threshold applied during the post-auction transition period.<sup>49</sup> Furthermore, WFOX-TV submitted a declaration stating that WHLV-TV has agreed to continue to accept such temporary pairwise interference. WFOX-TV has also agreed to accept any temporary pairwise interference in excess of 0.5 percent it will receive from WHLV-TV and to continue to operate at reduced power in order to continue to keep any interference caused to WHLV-TV below the temporary two percent limit permitted during the post-auction transition period.<sup>50</sup> We therefore find that continuing to allow a temporary increase of pairwise interference of up to two percent in this limited context will provide substantial public interest benefits that outweigh the minimal burdens during the additional transition period and we waive section 73.616(d) of our rules for this purpose.<sup>51</sup>

14. In addition, because the Station is currently located in the new TV Band, grant of the Licensee's requests will not delay any wireless licensee that purchased 600 MHz wireless licenses in the forward auction from accessing its spectrum when promised. We also note that the Licensee has pledged to increase viewer education and outreach above and beyond what is required by the Commission's rules to mitigate any viewer disruption caused by the change to the transition schedule. As a result, we find the facts and circumstances discussed above outweigh any negative consequences of a short delay until September 8, 2020, for the Station to vacate its pre-auction channel.

15. We continue to believe that the 39-month transition period established by the Commission struck the proper balance between, on the one hand, the interests of the transitioning stations to have sufficient time to build new facilities, obtain necessary equipment, schedule limited construction resources, and coordinate with linked-stations and, on the other hand, the interests of wireless auction winners to evaluate the investment made in the forward auction and to launch innovative services.<sup>52</sup> Dozens of stations satisfied the phase 9 deadline in the midst of pandemic emergency measures and a number of phase 10 stations report readiness to satisfy upcoming deadlines. Thus, we find that the current record does not suggest any reason to offer a blanket waiver or extension to all remaining stations that have yet to vacate their pre-auction channel.

16. We acknowledge that some limited number of additional stations may also need to seek waivers of the phase 10 phase completion date and the post-auction transition period end date. Therefore, we instruct the Media Bureau to consider future requests seeking such waivers consistent with the

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<sup>47</sup> Cox Request for Waiver at 7-8.

<sup>48</sup> See generally *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 49-52; *Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73; *Transition Reminder Public Notice*, 33 FCC Rcd at 8244-45, para. 14.

<sup>49</sup> Cox Request for Waiver at 7, Emery Decl. ¶ 18.

<sup>50</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16.

<sup>51</sup> We note that this is consistent with other waivers granted by the Media Bureau in phases 1 through 9. See *id.* (citing see, e.g., *Qualcomm Incorporated Petition for Declaratory Ruling*, WT Docket No. 05-7, Order, 21 FCC Rcd 11683 (2006) (*Qualcomm Order*) (permitting new wireless licensees in the 700 MHz Band to cause temporary increases of up to 1.5 percent interference to broadcasters)). The temporary two percent pairwise interference limit was deemed a reasonable accommodation of the need to reduce dependencies to facilitate the transition, which received general support in the record as an acceptable limitation during such an interim period. See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16-17. Accordingly, a waiver request where temporary pairwise interference to another station is above two percent would require a compelling justification, unless the impacted station(s) consented to such temporary pairwise interference.

<sup>52</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6801, paras. 572-73.

considerations included herein. We remind stations that the phase completion date and post-auction transition period end date are satisfied when a station vacates its pre-auction channel, including by utilizing existing flexibility included in the Transition Scheduling Plan such as extending a construction permit deadline, temporary operation on an interim facility, temporary use of an alternate channel, or temporary joint use of a channel.<sup>53</sup> All stations currently operating on their pre-auction channel are encouraged to diligently pursue satisfaction of the current deadlines and fully examine the aforementioned alternative options prior to seeking a waiver.

#### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, Cox Television Jacksonville LLC's Request for Waiver of sections 73.3700(b)(4)(iii) and 73.616(d) of the Commission's rules, 47 CFR §§ 73.3700(b)(4)(iii) and 73.616(d), **IS GRANTED**.

18. **IT IS FURTHER ORDERED** that the July 3, 2020 transition phase deadline and the July 13, 2020 post-auction transition period end date for WFOX-TV, Jacksonville, Florida **IS MODIFIED to September 8, 2020**.<sup>54</sup>

19. **IT IS FURTHER ORDERED** that Station WFOX-TV, Jacksonville, Florida is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on September 8, 2020**. We direct the Media Bureau to issue an authorization modifying the Station's construction permit (LMS File No. 0000034616) expiration date to correspond to the Station's new post-auction transition period deadline for the reasons set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>53</sup> See *Transition Procedures Public Notice*, 32 FCC Rcd at 872-73, para. 46-47; *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 915-17, paras. 54-59. If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. See 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction.

<sup>54</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.